

Commonwealth of Massachusetts
County of Suffolk
The Superior Court

CRIMINAL DOCKET#: [REDACTED]

RE: Commonwealth v [REDACTED]
TO: Edmond J Zabin, Esquire
Suffolk County District Attys Office
1 Bulfinch Place
3rd floor
Boston, MA 02114

NOTICE OF DOCKET ENTRY

You are hereby notified that on 05/09/2011 the following entry was made on the above referenced docket:

**Findings Upon Entry of Judgment of Contempt, filed by the Court this date.
(May 9, 2011) (Patrick F Brady, Justice) Copies given to counsel, 5/9/2011, in hand.**

Dated at Boston, Massachusetts this 9th day of May, 2011.

Maura A. Hennigan,
Clerk of the Court

Assistant Clerk

Telephone: 617-788-8126

SUFFOLK, SS COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT
NO. [REDACTED]

COMMONWEALTH

v.

[REDACTED] DEFENDANT

FINDINGS UPON ENTRY OF JUDGMENT OF CONTEMPT

On May 5, 2011, during the second day of impanelment in the case of Commonwealth v. [REDACTED] a first degree murder case, the court found the defendant's counsel, Barry P. Wilson, in contempt of court under rule 43, Mass. R. Crim. P. The contemptuous conduct, reflected in the transcript and on the audio disc of the court reporter, occurred in my presence, was disruptive of the court proceedings and a direct challenge to the authority of the court. Under the circumstances, it was necessary for the court to proceed under the summary contempt rule to maintain order in the courtroom. I recite hereafter the facts upon which the judgment of contempt was based.

Impanelment began on May 4, 2011. Initially, the court determined to seat 15 jurors because the case was expected to take two weeks to try. 10 jurors were selected during the proceedings on May 4, 2011. On the morning of May 5, at the parties' urging, the court determined that it would be prudent to seat 16 jurors. Each party was therefore allotted one additional peremptory challenge. On the afternoon of May 5, the Commonwealth had exercised its final (16th) challenge; the defense had additional peremptory challenges remaining. The defense exercised its 16th and final challenge on

prospective juror number 31, [REDACTED] The next juror, number 32, did not appear when called into the courtroom. The deputy court officer stated that the prospective juror did not appear when called. Further investigation revealed that the juror had appeared that morning for jury duty, and was likely sent to the session for impanelment in this case, but evidently had not returned after lunch as all the other jurors had. Mr. Wilson became upset that this juror was not available because he claimed that he exercised his remaining peremptory challenges on the assumption that this juror was available and would be declared indifferent, and thus the 16th juror.¹ He then requested that the court revert to the original plan to impanel 15 jurors. I denied the request. I then interviewed the next two jurors, numbers 33 and 34, and excused each for cause.

I then interviewed juror number 35, [REDACTED] indicated that he had not raised his hand indicating an affirmative answer to any of the questions which I asked the prospective jurors in a group in the courtroom earlier that morning. He then said that he did not have any feelings about black people or people of color in general which would affect his ability fairly to judge the case. [REDACTED] confidential juror questionnaire indicated that he had a law enforcement background as a federal agent for the Department of Homeland Security. I questioned him about this and he indicated that he had worked for the federal immigration services for about five years, and then joined the Department of Homeland Security following 9/11. He is currently unemployed. I specifically asked him if his background in law enforcement would affect his ability fairly to judge the case, and he unequivocally answered that it would not. The juror then departed the courtroom in accordance with my usual practice for an individual

¹ Mr. Wilson's reasons for wanting this juror, although irrelevant, are entirely whimsical: "This was my lucky juror. He's 32. That's his number, and his age is 32. It was happening. He was going to let my client go. I'm really disturbed that he's not here." (Tr. 6).

voir dire. I then declared him indifferent, which meant that he would be the 16th juror because the parties had exhausted their peremptory challenges.

Mr. Wilson then became enraged and engaged in conduct which I found to be contemptuous. When I declared the juror indifferent, he stood up and in an extremely loud and angry voice repeatedly shouted "No... No... No". The details of the tirade which followed are reflected in the attached transcript, pp. 24-28. The audio disc (beginning at approximately minute 50) which I will have marked as an exhibit for identification captures the flavor of his outburst, and especially the loud, abusive and disrespectful tone of voice.

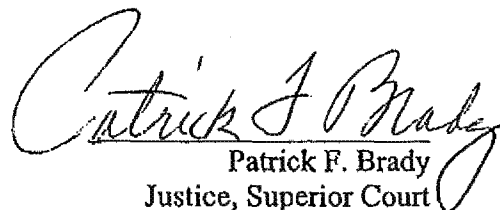
On several occasions the court attempted to interrupt what from the beginning was an obviously inappropriate and disruptive outburst. Mr. Wilson refused to stop. He called the court ruling ridiculous; he called the court ridiculous. He refused to try the case. He invited the court to lock him up and declare a mistrial.

During the outburst the juror was standing outside the courtroom door. In the midst of his tirade, Mr. Wilson said: "And the other thing is I think maybe if he's standing outside there you better go ask him if he heard me screaming, because I think you gotta excuse him now cause I think he knows I don't like him." (Tr.26).

The court, following the requirements of rule 43(b), asked Mr. Wilson if there was some reason why the court should not hold him in contempt. He responded with more of the same, inviting the court to hold him in contempt, and send him to jail: "I'll go with my client and maybe we can get a cell together and maybe you could declare a mistrial and then we can start all over again...." (Tr.27-28).

The court then found Mr. Wilson in contempt with a brief statement of reasons, and indicated that sentencing would be deferred until conclusion of the trial.

In summary, Mr. Wilson lost his temper at a ruling of the court and delivered a loud, abusive, insulting and disruptive outburst in defiance of the court ruling. At least in part the outburst was likely motivated (based on Mr. Wilson's statements) by a desire to force the court to excuse the juror because Mr. Wilson's screaming was so loud the juror may have heard him and concluded that Mr. Wilson "did not like him." Needless to say the court cannot tolerate such behavior.


Patrick F. Brady
Justice, Superior Court

9 May 11

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK ss.

SUPERIOR COURT
DEPARTMENT OF THE
TRIAL COURT



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COMMONWEALTH OF MASSACHUSETTS *
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PARTIAL TRANSCRIPT OF THE PROCEEDINGS
(Impanelment)

BEFORE: Honorable Patrick Brady
Suffolk Superior Courthouse
Boston, Massachusetts
May 5, 2011

Edmund Zabin, Assistant District Attorney
Elisabeth Martino, Assistant District Attorney
On behalf of the Commonwealth.

Barry Wilson, Esquire
On behalf of the Defendant.

Also Present:
Kazi Toure, Jury Consultant
On behalf of the Defendant.

NANCY MCCANN, CVR-C.M.
OFFICIAL COURT REPORTER
SUFFOLK SUPERIOR COURT

P R O C E E D I N G S

Thursday, May 5, 2011

(Court in session at 9:05 a.m.)

(Defendant present.)

(Continuation of Impanelment.)

THE CLERK: Juror Number 31, [REDACTED]

THE COURT: Hello, [REDACTED]

THE JUROR: Hi.

THE COURT: This morning when you were in the courtroom with the group and I asked the questions, did you raise your hand?

THE JUROR: No.

THE COURT: Okay. Do you have any feelings about black people or people of color in general that might affect your ability to fairly judge the case?

THE JUROR: No, sir.

THE COURT: All right. If you bear with me, I need to check through the form to see if there's something I should be following up on.

So "Your Experience with the Law," you checked off "Been seated on a jury." Is that you?

1 THE JUROR: Yes.

2 THE COURT: Here in Suffolk or
3 somewhere else?

4 THE JUROR: Here in Suffolk twice.

5 THE COURT: Good. How long ago?

6 THE JUROR: Three years ago.

7 THE COURT: That was the last time,
8 right?

9 THE JUROR: Yes.

10 THE COURT: All right. Do you know me
11 or any of the participants?

12 THE JUROR: No.

13 THE COURT: Okay. And when was the
14 time prior to that?

15 THE JUROR: I think it was probably a
16 three years before that.

17 THE COURT: Okay. Again, did you ever
18 run into me or any of these good lawyers?

19 THE JUROR: Not that I know of.

20 THE COURT: All right. And this is
21 just, "Have you or anyone in your house or
22 family ever worked for any of the following,"
23 and you have a no and a yes filled in.

24 THE JUROR: I don't have my glasses
25 on, but nobody has worked for law enforcement

1 or courts or anything.

2 THE COURT: Law enforcement, courts,
3 corrections or detention.

4 THE JUROR: No.

5 THE COURT: Or other law related
6 employment?

7 THE JUROR: No.

8 THE COURT: Okay. That's all I have
9 to ask you, [REDACTED] Thank you very much.
10 (Juror 31 exits courtroom.)

11 THE COURT: [REDACTED] is indifferent.
12 Mr. Wilson?

13 MR. WILSON: I just need a minute. Is
14 this my last challenge?

15 THE COURT: It is.

16 MR. WILSON: I want to take a moment,
17 appreciate this before I decide.

18 Challenge.

19 THE COURT: Okay. [REDACTED] is
20 excused.

21 (Juror 31 excused.)

22 THE CLERK: Juror Number 32, [REDACTED]
23 [REDACTED]

24 THE COURT OFFICER: Judge, Number 32
25 has not answered. So I'm going to send in Jr

1 Number 33.

2 MR. WILSON: No, no, no, no. No.

3 THE COURT: Wait a minute. I'm sorry.
4 Number 32 didn't answer and what?

5 THE COURT OFFICER: Juror Number 32
6 has not answered.

7 THE COURT: Was he here this morning?

8 THE COURT OFFICER: I don't think he
9 was here this morning either.

10 THE COURT: So why don't we check with
11 Officer Cordiero because I don't know if it's a
12 matter of him not coming back for lunch or
13 what. Can we check?

14 THE COURT OFFICER: Let me make sure
15 he's not sitting out here.

16 THE COURT: Do you wish to say
17 something, Mr. Wilson?

18 MR. WILSON: Well, yes. If the juror
19 wasn't here -- I make challenges based on what
20 is here, and if I knew the person wasn't
21 included, that might have altered how I picked
22 this jury over the last -- this afternoon, at
23 least.

24 THE COURT: Did you want us to go get
25 [REDACTED] to come back?

1 MR. WILSON: No. I want [REDACTED] I
2 like this man.

3 THE COURT: I'm sorry, Mr. Wilson,
4 let's find out what the deal is.

5 THE COURT OFFICER: He does not answer
6 the call. We're checking the jury pool right
7 now.

8 MR. WILSON: This was my lucky juror.
9 He's 32. That's his number, and his age is 32.
10 It was happening. He was going to let my
11 client go. I'm really disturbed that he's not
12 here.

13 THE COURT: Just a second.

14 THE COURT OFFICER: Unfortunately, he
15 didn't return. He was here. They did log him
16 in, and he hasn't returned back from lunch.

17 THE COURT: Well, it's quarter to
18 three, so --

19 THE COURT OFFICER: And he hasn't
20 returned yet.

21 THE COURT: There didn't seem to be
22 any confusion about where to report to after
23 lunch?

24 THE COURT OFFICER: No, none.
25 Everybody else got back. I checked with all

1 the other jurors.

2 THE COURT: One other thing, could you
3 check downstairs to see if he --

4 THE COURT OFFICER: I already
5 downstairs.

6 THE COURT: And he's not in the jury
7 pool?

8 THE COURT OFFICER: He's not in the
9 jury pool. He did not return back.

10 THE COURT: All right. Well, then I
11 consider him to have violated his
12 responsibilities. He has not completed
13 satisfactorily his jury duty, so he should be
14 reported to the Jury Commissioner, and he can
15 take such action as he deems appropriate.

16 THE COURT OFFICER: We'll take care of
17 that.

18 THE COURT: Do you want to mark this,
19 Mr. Wilson, for any reason?

20 MR. WILSON: No. What I want to do is
21 I want the jury selection to stop. I want to
22 impanel 15 jurors. I believe that I made
23 decisions based on what I believed was going to
24 come up.

25 I would not have continued in this

1 manner given what is coming next if I knew that
2 Number 32 was -- what's his name, [REDACTED] -- if
3 [REDACTED] wasn't there.

4 The Court always agreed on 15. We're
5 all out of challenges, and I wish to shut it
6 down now because otherwise I believe that I
7 have not been able to adequately exercise and
8 do what I want because I anticipated that Mr.
9 Scano was available.

10 THE COURT: Well, could I ask you, how
11 would you know what [REDACTED] would say when he
12 gets on the stand? I don't know anything about
13 his beliefs or whether he raised his hand or
14 what his attitudes are.

15 I mean, we have not seen the
16 gentleman. I don't know how you can predict
17 that he definitely would have been a qualified
18 juror.

19 So, I'm not going to stop the
20 impanelment. I mean, the attorneys wanted 16,
21 so we committed ourselves to 16. I see no
22 reason why we shouldn't go ahead and --

23 MR. WILSON: Judge --

24 THE COURT: -- choose 16.

25 MR. WILSON: -- first of all, you

1 qualify anybody. The people I think you
2 shouldn't qualify you qualified, so he would
3 have qualified.

4 Secondly, it doesn't matter. What
5 matters is I was laboring under a certain
6 assumption. The assumption was that he was the
7 next juror. That assumption in conjunction
8 with other issues -- other issues which are
9 that other numbers that come next, 33 and 34
10 answered certain of your questions, and they
11 would not have qualified.

12 Therefore, and given what I know is
13 coming after that, I had a whole strategy, and
14 now I could be sitting here holding the banana
15 because I didn't know that 32 wasn't here. I
16 could have taken a different juror if I knew
17 that 32 was not here.

18 And reading of the next three will
19 certainly indicate what my problem is and why I
20 made my decisions the way I did. The next two
21 people both answered your questions.

22 THE COURT: Both what? They raised
23 their hands?

24 MR. WILSON: Yes.

25 THE COURT: Okay.

1 MR. WILSON: And ^Now I have no
2 challenges. And then we go to somewhere else,
3 and oh, whoa, whoa, you might find the juror
4 qualified. I wouldn't the juror qualified.

5 And so therefore I suggest that we
6 stop at 15.

7 THE COURT: Do you have anything to
8 say about that?

9 MR. ZABIN: No, Your Honor.

10 THE COURT: Okay. I'm going to deny
11 your request to stop at 15. We'll continue the
12 impanelment.

13 Juror 33.

14 To preserve your appellate rights, did
15 you want that marked, Mr. Wilson?

16 MR. WILSON: No. I want another
17 challenge.

18 THE COURT: I take that as a no, you
19 don't want that marked. Okay.

20 MR. WILSON: No. I want another
21 challenge.

22 THE COURT: No. The question that I
23 asked you is do you want his juror slip marked.

24 MR. WILSON: No.

25 THE COURT: Okay. You can bring in

1 the next juror.

2 THE CLERK: Juror Number 33, [REDACTED]

3 [REDACTED]

4 THE JUROR: Yes. [REDACTED]

5 THE COURT: Good afternoon, [REDACTED]

6 nice to meet you.

7 THE JUROR: You, too.

8 THE COURT: When you were in the
9 courtroom this morning and I asked questions of
10 the group, did you raise your hand in response
11 to anything that I asked?

12 THE JUROR: Yes.

13 THE COURT: What do you have to tell
14 us?

15 THE JUROR: I believe it was when --
16 you're going to have to actually ask the
17 question again because I can't really remember.

18 THE COURT: Well, give me a hint so I
19 can go back. I asked quite a few questions.

20 THE JUROR: Yeah, you did. It was
21 about -- there was one that said something
22 about -- it was the cops.

23 THE COURT: Yes.

24 THE JUROR: If they would --

25 THE COURT: I think I know what it is.

1 Let me just suggest, because I ask this in
2 every case: Would you give any more credence
3 or belief or any less credence or belief to a
4 witness merely because he or she is a police
5 officer or a law enforcement agency?

6 THE JUROR: That's what it was.

7 THE COURT: Okay. What's your answer
8 to that?

9 THE JUROR: Well, it was I recognized
10 somebody. It was [REDACTED] I don't think
11 that he was a -- that he's a really
12 professional cop.

13 THE COURT: You've had a run-in with
14 him before?

15 THE JUROR: Yes. I know him very
16 well. I know his family. But I didn't want to
17 put myself in a situation where I would have to
18 face him or any of his -- just his people that
19 he work with because I'm very familiar with his
20 neighborhood, and I know a lot of people that
21 work with him.

22 And I kind of push myself away from
23 those people in situations like that. And to
24 tell you the truth, I don't think he's a really
25 good cop.

1 THE COURT: Do you have a general
2 attitude of distrust of police officers, or is
3 this just focused on that one individual
4 officer?

5 THE JUROR: Well, I think there's good
6 officers out there period. You know, like some
7 of them -- there are good officers out there.
8 I know a lot of good officers. But it's him
9 because I have seen, I have heard, and I know
10 his family.

11 And I just -- I wouldn't want to feed
12 into any of his situations, any of his cases,
13 anything. I don't want anything to do with it.

14 And honestly the case that you was
15 talking about in Lenox Projects, I live there,
16 and I honestly do not want to go and walk
17 outside and to know that that I seen the person
18 face-to-face and have to go outside and
19 probably see his friends and everything.

20 You know, the word could be passed
21 around. I would never know. I have brothers
22 and sisters. You know, I have to protect my
23 family.

24 THE COURT: All right. Did you have
25 your hand up for anything else?

1 I'll consider that. I'm not
2 forgetting about it, but I'll consider it later
3 with counsel.

4 THE JUROR: Okay.

5 THE COURT: Did you have anything else
6 that you had your hand up for or anything else
7 that you need to tell us?

8 THE JUROR: I don't think -- I had my
9 hands up, but it wasn't that serious.

10 THE COURT: It wasn't what?

11 THE JUROR: It wasn't really serious.

12 THE COURT: Well, what was it?

13 THE JUROR: Um -- what else did I
14 have. I know there was the cop. There was --
15 I raised my hand like three times, I know that.
16 I'm sorry, I can't remember.

17 THE COURT: Your experience with the
18 law?

19 THE JUROR: Oh, yeah. I kind of
20 scribbled it a little bit. I had marked no at
21 first, but then I kind of thought about it for
22 like the past. I was stubborn, young. And I
23 went through a lot with my family, you know,
24 brothers and sisters, fights, and it kind of
25 took me to the wrong path.

1 THE COURT: So, did you have some
2 involvement with the Juvenile Court?

3 THE JUROR: Just Juvenile, not -- ever
4 since, no cases at all.

5 THE COURT: I don't mean to pry but
6 what was the nature of your involvement?

7 THE JUROR: Well, there was a couple
8 of times that me and my sister had got into
9 fights. I got a assault and battery, and then
10 there was another time with my sister again.
11 She had put a restraining order against me in
12 school.

13 I was enrolled in that school for a
14 while -- and that school, Snowden
15 International, and she came in and she put a
16 restraining order on me due to the past fight
17 that we had. So it kind of messed up my record
18 a lot. It messed me up a lot in school, too.

19 But it got better. Everything is
20 straightened out.

21 THE COURT: Good. Do you have any
22 feelings about black people or in general
23 people of color that might affect your ability
24 to fairly judge the case?

25 THE JUROR: No, I don't judge. I

1 don't judge at all. But I don't really chill
2 with a lot of --

3 THE COURT: You don't what?

4 THE JUROR: I don't really like hang
5 or associate with a lot of like Dominicans.
6 I'm Spanish Puerto Rican, and I have a lot of
7 Puerto Rican friends. I don't have a lot of
8 black friends and white friends. I just stick
9 to my little inner circle.

10 THE COURT: All right. Thanks, [REDACTED]
11 [REDACTED] You can step outside. I'll talk to the
12 attorneys.

13 (Juror 32 exits courtroom.)

14 THE COURT: I'm going to excuse [REDACTED]
15 [REDACTED] She's excused.

16 (Juror 32 excused.)

17 THE CLERK: Juror Number 34, [REDACTED]
18 [REDACTED]

19 THE JUROR: Yes.

20 THE COURT: Good afternoon, [REDACTED]
21 very nice to meet you.

22 THE JUROR: Nice to meet you, as well.

23 THE COURT: When you were in the
24 courtroom this morning, I asked questions of
25 the group. Did you raise your hand in response

1 to any of those questions?

2 THE JUROR: Yes.

3 THE COURT: What do you have to tell
4 us?

5 THE JUROR: The first one was in
6 regards to whether I would have bias towards
7 the Boston EMS as well as the medical examiner
8 and all that. I work closely with them.

9 THE COURT: You know the medical
10 examiner?

11 THE JUROR: I work at Boston Medical
12 Center. I don't know her personally, but I've
13 just worked with the Department so long I feel
14 like I would have a bias in terms of that.

15 THE COURT: You mean to favor the
16 testimony of the EMTs and medical examiner?

17 THE JUROR: Exactly, just because I do
18 work with them. The second thing is I do see a
19 lot of drug associated patients in the ED, and
20 unfortunately I have developed a bias in terms
21 of -- I treated them as fair as I could in
22 terms of treatment, but I did develop a certain
23 bias in terms of how I perceive them. And I am
24 concerned that that might sort of influence my
25 judgment on this case.

1 THE COURT: Well, that's the point. I
2 mean, I think it's safe to say that a large
3 percentage of our citizens don't like drug
4 dealing or usage and are opposed to it. It's
5 crime obviously.

6 But the question is would it -- and I
7 didn't give you any detail about --

8 THE JUROR: Right.

9 THE COURT: -- the case, but I was
10 trying to communicate that it's going to be a
11 part of the case, and if people feel strongly
12 about it, then it might affect their ability to
13 judge the case. That's what I'm getting at.

14 THE JUROR: And that's what I'm
15 getting at, as well, just because I do treat
16 them. I see the aspect of their drug-seeking
17 behaviors and I sort of develop bias in the
18 sense I tend to think, for lack of better
19 words, probably less of them than I should
20 unfortunately.

21 But it's just part of the profession
22 that I've developed sort of a bias
23 unfortunately because of that. I'm not saying
24 it's right, and I'm not saying it's wrong.

25 THE COURT: And I'm not here to judge

1 you about that. But I do need to find out
2 anything that might affect their ability to be
3 fair.

4 THE JUROR: And the other thing I
5 answered yes to was the hardship question
6 because this would jeopardize my residency
7 unfortunately.

8 THE COURT: You're in residency?

9 THE JUROR: Um-hum. So two to three
10 weeks is a huge chunk of time that I just don't
11 think I'll be able to commit unless I push back
12 my residency, and that's hard to do
13 unfortunately.

14 THE COURT: I understand. All right.
15 Well, thank you very much. I'll consider what
16 you said. You can follow the Court Officer.

17 THE JUROR: Thank you.

18 (Juror 33 exits courtroom.)

19 THE COURT: I'm going to excuse [REDACTED]
20 [REDACTED]

21 (Juror 33 is excused.)

22 MR. WILSON: Will the record reflect
23 the Court just did everything I predicted the
24 Court was going to do.

25 I renew my motion again that we stop

1 at 15 or I be given another challenge because I
2 made decisions based on what I knew was going
3 to happen.

4 And son of a gun, that's what
5 happened. And I didn't know that the man
6 wasn't here. That's like I'm ambushed.

7 THE COURT: I understand, Mr. Wilson.

8 MR. WILSON: Oh, no, I don't think you
9 do.

10 THE COURT: Well, just because I
11 disagree with you doesn't mean I don't
12 understand it. The objection is overruled.

13 You can bring in the next juror.

14 MR. WILSON: Oh, you can understand
15 it.

16 THE CLERK: Juror Number 35, [REDACTED]

17 [REDACTED]

18 THE COURT: [REDACTED]

19 THE JUROR: Yes, sir.

20 THE COURT: Very nice to meet you.

21 THE JUROR: Very nice to meet you.

22 THE COURT: So when you were in the
23 courtroom this morning and I asked questions,
24 did you raise your hand in response to anything
25 that I asked the group?

1 THE JUROR: No, Your Honor.

2 THE COURT: Do you have any feelings
3 about black people or in general people of
4 color that might affect your ability to fairly
5 judge the case if you're selected to be one of
6 the jurors?

7 THE JUROR: No, Your Honor.

8 THE COURT: All right. I need to go
9 through the form to see if you filled it out
10 all right.

11 THE JUROR: No problem.

12 THE COURT: So you're -- about your
13 employment background. You're presently
14 unemployed?

15 THE JUROR: I'm presently unemployed.
16 Yes, sir.

17 THE COURT: But you worked as federal
18 agent for the Department of Homeland Security?

19 THE JUROR: Yes, sir.

20 THE COURT: When was that?

21 THE JUROR: I just recently got
22 relieved of duty about a month ago, just under
23 15 years service.

24 THE COURT: Okay. I didn't even know
25 that the Department of Homeland Security

1 existed that long. I thought it was something
2 after 9/11.

3 THE JUROR: Well, I started off with
4 Immigration and Naturalization Services, and
5 then we transferred into Homeland Security.

6 THE COURT: But it was created after
7 9/11?

8 THE JUROR: It was created after 9/11,
9 yes. I think it was 2003 or 2004 it started.

10 THE COURT: Okay. Is the fact that
11 you worked for law enforcement for a number of
12 years, is that anything that's going to have a
13 bearing on your ability to fairly judge this
14 case, and especially evaluate the testimony of
15 law enforcement officers?

16 THE JUROR: I don't think it would,
17 sir.

18 THE COURT: Are you quite sure of
19 that?

20 THE JUROR: Yes, sir.

21 THE COURT: Do you have children?

22 THE JUROR: I have two children, yes.

23 THE COURT: How old are they?

24 THE JUROR: My daughter is 20, and my
25 son is 10.

1 THE COURT: I just followed up because
2 there's a space for that.

3 THE JUROR: Okay.

4 THE COURT: So you checked off your
5 experience with the law in the area that dealt
6 with arrests, etcetera, etcetera. Do you see
7 that?

8 THE JUROR: Yes.

9 THE COURT: But you didn't fill in any
10 of the blanks.

11 THE JUROR: I'm sorry. I've never
12 been charged with a crime, never been sued,
13 never been arrested, never been convicted of
14 anything, never been a witness for anything,
15 never had a court order against me, never been
16 sat on a jury, never been involved in a crime.

17 THE COURT: But you checked yes.

18 THE JUROR: I'm sorry.

19 THE COURT: That's why I'm asking.

20 THE JUROR: I'm sorry. I think I'm
21 used to having yes being first all the time.
22 Sorry, sir.

23 THE COURT: So that answer to that is
24 no.

25 THE JUROR: Yes, it should have been

1 no.

2 THE COURT: I'm not trying to trick
3 jurors. But sometimes they fill it out a
4 little quick.

5 THE JUROR: Oh, no, that's okay.

6 THE COURT: And the last question that
7 maybe the same thing. Just read the very last
8 question, and that's a general question whether
9 you have anything in your background, etcetera,
10 that might affect your ability to be fair and
11 impartial. You checked off yes, but maybe you
12 meant no.

13 THE JUROR: There isn't anything. I
14 meant no. I'm sorry, sir.

15 THE COURT: Thank you, [REDACTED]
16 You can step outside, and I'll let you know.
17 (Juror 35 exits courtroom.)

18 THE COURT: [REDACTED] is
19 indifferent. And both counsel having exercised
20 their 16 --

21 MR. WILSON: Oh, no. Oh, no --

22 THE COURT: Wait a minute.

23 MR. WILSON: Oh, no.

24 THE COURT: Mr. Wilson --

25 MR. WILSON: No.

1 THE COURT: Mr. Wilson --

2 MR. WILSON: No, we're not going to
3 say wait. We're not going to say wait.

4 You excused a juror because she's got
5 two kids 20 and 21, and this guy's got 15 years
6 --

7 THE COURT: Mr. Wilson --

8 MR. WILSON: -- of law enforcement.

9 THE COURT: Mr. Wilson --

10 MR. WILSON: And you're going to sit
11 him.

12 THE COURT: Listen, if you --

13 MR. WILSON: Lock me up now. Just
14 lock me up and declare it a mistrial. I'm not
15 sitting with that guy on this jury. No way.

16 THE COURT: Mr. Wilson --

17 MR. WILSON: No way. No way am I
18 going to try a case with that man. That's
19 ridiculous. Fifteen years a federal agent and
20 he's going to be unbiased. Are you kidding me?

21 I can't do it. I won't do it. Take
22 my ticket. I don't really care. This is just
23 plain ridiculous. Ridiculous.

24 I'm going to sit there with a federal
25 agent who says that he's not going to believe

1 his fellow officers, are you ridiculous. You
2 gotta be. You gotta be. I can't try the case
3 and I won't. I will not.

4 THE COURT: Well, I'm afraid you're
5 going to have to try the case.

6 MR. WILSON: Oh, I don't think so. I
7 can't. I'm not looking -- I can't. I can't.
8 How can I look at my client and say he should
9 think this is legitimate after you make a
10 ruling like that and you excuse a woman who had
11 two children, and that's enough excuse? You
12 think I would ever let a woman -- whatever that
13 man is -- sit on it.

14 And the other thing is I think maybe
15 if he's standing outside there you better go
16 ask him if he heard me screaming, because I
17 think you gotta excuse him now cause I think he
18 knows I don't like him.

19 THE COURT: Mr. Wilson, is there some
20 reason that I should not hold you in contempt?

21 MR. WILSON: Judge, you can do what
22 you wish to do, but I have news for you. How
23 could you expect me to do anything different?

24 A young man is on trial for his life,
25 and a juror goes bye-bye. I can -- I said that

1 I had a decision. I made decisions.

2 A juror is not there, and then I --
3 exactly everything I predict is going to happen
4 and then it happens, and you want me to say
5 that's okay and tell my client he should feel
6 okay and tell my client that it's no the up-
7 and-up and that it's all fine.

8 You can hold me in contempt. You
9 could send me Nashua Street right now. I'll go
10 with my client and maybe we can get a cell
11 together and maybe you could declare a mistrial
12 and then we can start over again because I am
13 not -- I am not going to try a case in which as
14 far as I'm concerned the Commonwealth doesn't
15 have a shot to be except by -- except by police
16 officers going and leaning on people and
17 getting the changed stories.

18 And now I'm going to put in the box a
19 man who spent 15 years in Homeland Security,
20 and I'm going to think that my client is going
21 to get a fair trial?

22 I don't think if they came up and they
23 asked to put me in the box that any prosecutor
24 in their right mind would think that I should
25 sit there.

1 This is just, just wrong. You can do
2 whatever you wish to me, but this is just
3 wrong.

4 THE COURT: All right. Thank you, Mr.
5 Wilson. I've heard enough.

6 I do hold Mr. Wilson in contempt. I
7 find that his behavior is loud, insulting,
8 disrespectful behavior. The loud voice being
9 at least partially intended so the jurors may
10 hear him, including the juror who is presumably
11 waiting outside the door, is disruptive to the
12 Court proceedings. And I am going to hold him
13 in contempt, and I am going to sentence him.

14 However, I'm going to defer the
15 sentencing until a later date. I respect the
16 defendant's right to have counsel of his
17 choosing try the case, so I'm not going to
18 interfere with that.

19 Mr. Wilson will be expected to
20 continue to defend [REDACTED] and at the
21 conclusion of the case I'm going to sentence
22 him appropriately.

23 He is held in contempt, and those are
24 my findings.

25 MR. WILSON: You can't do that. You

1 can't do that because what I'm going to put on
2 record right now is you going to send me to
3 jail, but if I act like a good boy, maybe I'll
4 only go to jail for a few days. If I act like
5 a bad boy, then I'll go to jail for a few weeks
6 or a few months, or whatever time I don't know.

7 But in any event, what we have is now
8 I have to consider whether or not I can do the
9 right thing by my client or can I do the right
10 thing by me. Will I go to jail or won't I go
11 to jail or how long I go to jail.

12 So what I suggest is I can't represent
13 my client. You've held me in contempt now.

14 THE COURT: Take [REDACTED] upstairs.
15 We'll break for five minutes. We'll resume.
16 I'll bring the jurors down. I'll excuse them
17 for the day. If there's any other legal
18 matters that have to be taken up this
19 afternoon, I'll do that then.

20 We'll recess for five minutes.

21 MR. WILSON: I'm not done. I'm not
22 done. Let the record reflect that I cannot
23 represent my client anymore because I've been
24 held in contempt and the condition of my
25 contempt will not be decided until the Court --

1 the trial is over. And I cannot make a
2 determination based -- I cannot conduct myself
3 in a manner that I'm supposed to or not
4 supposed to, but I cannot be a zealous advocate
5 and within the propriety of what my
6 responsibilities are under the code of
7 professional ethics because I don't know.

8 Right now I have to worry about me
9 instead of worrying about my client, and if I
10 got to worry about me instead of my client,
11 then I can't worry about my client, then I
12 can't do my job because under the code my first
13 responsibility is to my client.

14 THE COURT: All right. Five minute
15 recess.

16 (Recess taken.)
17

C E R T I F I C A T E

I, Nancy McCann, CVR-COMPANY, Official Court Reporter, do hereby certify that the foregoing pages 1 - 30 represent a true and accurate record of the proceedings held concerning the aforementioned matter before the Honorable Patrick Brady on May 5, 2011 to the best of my knowledge, skill and ability.

Nancy McCann

Nancy McCann, CVR-C.M., OCR

